above or below him of vested rights, he must cease to enjoy it, or answer in damages for the injury done. This ruling, undoubtedly correct, if applied to the evidence, would have excluded it.

The judgment is reversed and a venire de novo awarded.

In the Supreme Court of Pennsylvania, Eastern District.

COMMONWEALTH *vs.* WILLIAM H. JEANDELL.

1. Where an ordinary driver of a passenger railroad line is driving for hire for the company in the business of transporting passengers on and along the railway track on the Sabbath day, for the usual week-day fare, he is guilty of a breach of the peace.
2. The case of Commonwealth *vs.* Johnson, 10 Harris, 102; 2 American Law Register, 285 affirmed.
3. When worldly employment is carried on in such a manner and in such a place as to disturb the peace and religious exercises of the community, either at home or in churches, and cannot be restrained by the imposition of the penalty in the act, such circumstances constitute a breach of the peace.

Messrs. Porter and *Olmsted*, for the Commonwealth.

Messrs. Webster and *W. L. Hirst*, for defendant.

The facts of the case sufficiently appear in the opinion of the court which was delivered, (July 23, 1859,) by

THOMPSON, J.—The prisoner Jeandell was arrested on the 17th inst., by officer sergeant Orr, on instructions from the Mayor, while in the act of driving one of the cars of the Green and Coates street Passenger Railroad Company, filled with passengers, at Coates and Twenty-second street." The arrest took place about 1 o'clock P. M., of the day, and shortly after the starting of the car. He was one of the ordinary drivers of that line, and it is admitted was at the time driving for hire for the company, in the business of conveying passengers on and along the line of the company's road for the usual week-day fare. It appears from the letter of the President of the company to the Mayor, that it was the intention of the company to run their cars on the day mentioned under certain regulations, as to the rate of speed in passing churches, and by changing their bells for others making less noise. The Mayor having received the notice, thought it his duty to direct the arrest of those engaged in driving the cars, upon the grounds of a breach of the peace.

The evidence disclosed that the car was full of passengers, and it was testified that there was considerable noise and discussion on the subject of the rumored arrest, and the right of this line to run their cars on Sunday. It also appears that a pretty large concourse of people were collected at the depot of the company and at the place of the arrest, and that after the driver and conductor were arrested there was singing in the car. Evidence was heard without objection, on both sides, as to and upon the question of the alleged breach of the peace, and as to the noise made by those in the cars, and of the noise and disturbance made by the car itself. It appeared that cars had been run on and along this line the preceding Sunday, and several witnesses testified that it greatly disturbed the public worship in some of the churches along the line, as well as to private citizens. This evidence was proper as showing the extent of the disturbance, which, as far as the car had gone, was incident to the running on the day of the arrest, and what the extent would have been if continued. The witnesses for the Commonwealth were generally of opinion that the running of cars was a great disturbance of the peace and quiet of the Sabbath.

On the other side, it was claimed that the noise made by the car was only such as was incident to that mode of conveyance, and was not a disturbance to any inconvenient extent. And to this effect they examined several witnesses.

The question for determination now is, whether the prisoner is guilty of a breach of the peace, or *only* answerable for the penalty inflicted by the act of 22d of April, 1794, for performing worldly employment on the "Lord's Day, commonly called Sunday." If the latter, he must be discharged, but if guilty of the former he must be held to answer in the Quarter Sessions at its next term.

That driving a public conveyance for hire, is doing worldly employment within the provisions of this statute, cannot be doubted, since the decision of the court in the case of the *Commonwealth* vs. *Johnston*, 10 Har. 102. It was a similar case against an omnibus driver, on a line between Pittsburgh and Lawrenceville, and driving for pay, for the owner of the line; and it was determined by a majority of this court, that this was a violation of the act of Assembly of 1794. This statute was not the first in Pennsylvania on the

subject of Sunday. The statutes of 1705 and 1786 had existed prior thereto, but were in most particulars supplied by the act of 1794. The provisions of all of them seem to have had in view the same object, the prohibition of doing or performing worldly business on the Sabbath day, and establishing and maintaining it by positive civil enactment as a day of rest and repose. The penalty imposed by the act of 1794 for a breach of its provisions is the sum of *four dollars* for each and every offence, and in default of payment, imprisonment for six days. If I were determining the liability of this defendant, under the evidence, to the penalty of the act, I could not hesitate a moment to say he had incurred it, but I am not. A different question arising out of this act is the object of this inquiry; and that is, whether the defendant, in doing an act prohibited by law, did it in a manner to disturb the public peace. The existence of the penalty in the act, as a consequence of worldly employment on the Sabbath, is to be taken as a prohibition of the act, *Kepner* vs. *Keefer*, 6 Watts 233, Carthew p. 252. It has been decided, that one penalty covers the continued infractions of a whole day. It certainly cannot be contended, that every violation of that statute, is necessarily a breach of the peace. Work noiselessly and quietly done may disturb no one, and still the performer of it, if proceeded against, may have to pay the penalty, but would be answerable no further.

But when worldly employment is carried on in such a manner and in such places as to disturb the peace and the religious exercises of the community, either at home or in churches, or places of public worship, and it may not or cannot be restrained by the imposition of the defined penalty in the act, do not such circumstances constitute a breach of the public peace of the Sabbath, and may not the offender or the offenders be held to bail to keep the peace?

That work, thus publicly performed, might amount to a breach of the peace, seems to have been the opinion of Chief Justice Tilghman. In the case of *Commonwealth* vs. *Eyre*, 1 S. & R. 347, he said, "the violation of the Sabbath is a crime which deserves punishment. But when the work done is without *noise* or *disorder*, there is nothing in it like actual breach of the peace."

Similar language was held by Justice Yates in the same case.

The converse of the proposition is clearly deducible from the statement of it in the terms used.

In *Dupuy* vs. *Commonwealth*, Brightly's Rep. 44, Kennedy J. sitting at nisi prius, said that "doing unnecessary work, so as to disturb the worship of others, is indictable." If arrested and held to answer for this, the prisoner would be held to good behavior in the meantime. So in *Teaman* vs. *Commonwealth*, 1 Phil. Rep. 460. It was an attempt to hold to bail a news-vendor for crying and selling his papers on Sunday. On the hearing, Judge Thompson said: "The crying of newspapers in the public streets on Sunday *is a breach of the peace.* As well might the oysterman cry his oysters, or the charcoal man ring his bell. The peace of Sunday may be disturbed by acts which on other days cannot be complained of; such acts as interfere with the rights which the law vouchsafes to the public who desire to observe that day as a period of religious observance and rest from worldly business. In regard to this question, I concur in the doctrine that the law gives to the public the right of enjoying the Sabbath as a day of rest and of religious exercises, free and clear of all disturbance from merely unnecessary and unallowed worldly employment.

That where the law is contravened in such a manner as to disturb that enjoyment by noise or disturbance accompanying it, or incident to it, it is a breach of the peace."

The prisoner was discharged, and the reason stated by the learned judge in the remark, that "if it had appeared that any person complained of being *disturbed by the defendant*, or that any one was accosted by him for the purpose of selling his papers, such a complaint would have rendered the defendant liable to the charge now made," surety of the peace, as I understand the case.

These opinions show, as far as they go, the inclination of the minds of judges of learning and experience that it may be treated as a breach of the peace. In this I do not mean the disturbance of conscience, constructive disturbance, but actual, occurring so long or so frequently and in such a place as to amount to a public disturbance. The reason the law holds it to be such is, that the occurrence cannot be prevented otherwise than by treating it as such

and it is so treated to prevent violent remedies to redress a wrong. If we must wait until breaches of the peace, in the ordinary and week-day sense of the term, occur before we interpose a preventive remedy, then is the mischief done and the breach of the public peace aggravated.

If the running of the cars on the passenger railroads is a disturbance of the public peace of the Sabbath, and the rights of worship and of rest, by reason of the noise accompanying them, and they are not restrainable by reason of the inefficiency of existing laws, and must be permitted to continue because they have not produced actual resistance and collision on the part of or with those who oppose such a course, they even will not in all probability long be wanting, and we may have the realization of what the unlawful act has a tendency to produce, breaches of the peace of a more unmistakable character. It was the duty of the conservators of the peace to prevent this offence.

The history of mankind shows that there is nothing about which they will move more zealously, and fiercely struggle, than against encroachment on rights of conscience or conscientious exercises.

The defendant here acted, in driving the car in question, by direction of his employers, who well knew that they were violating an act of assembly—for the law was plain and the decree on it recent. They acted in violation of it, not through any principle of necessity or supposed necessity, but simply for gain, as the evidence clearly shows; and the prisoner was bound to know the law, and does not deny that he knew the purpose. His driving the car at the time of the arrest was accompanied by noise, sufficient, as the testimony shows, at the time and by the experience of the preceding Sabbath, to greatly interfere with public worship, and disturb the public along the line, and was accompanied by a crowd of persons and some disorderly conduct, if the witnesses are to be believed. I think this constituted a breach of the peace of the Sabbath, as ordained and established by the act of 1794, and that under the circumstances an arrest was proper.

Traveling or riding for recreation even, is not a breach of the Sabbath, and persons may not be arrested for riding along the

streets for such purposes. The disturbance, if any, occasioned by the vehicle would be but for an instant, and not be soon recurring. That is very unlike, in character, the carrying of passengers in a vehicle along the same route every six minutes, as was intended by the company on the day the arrest was made; nor do I believe in the right to arrest for any worldly business, unless in cases where the business done does actually disturb the peace of the neighborhood. Then it amounts to a different offence from that for which the penalty of the act of 1794 is provided. And this is all that it may be necessary to say in answer to the attempted application of the act of 1806 to the case in hand.

The act provides that where a statute enjoins anything to be done, in a particular way, or affixes a penalty to the doing of an act, the remedy of the statute should be followed, and no other. The penalty imposed by the act of 1794 is for the performance of worldly employment—a punishment for the act. The offence complained of here is the disturbance of the public peace, and the worldly employment, the kind and manner of it, is only evidence of the offence charged. It is not covered by the act of 1794.

Although Christians of all denominations look upon the institution of the Sabbath as of divine origin, yet it requires statutes to protect its observance, and the act of 1794, so often referred to, was undoubtedly passed for that purpose. It established what might be called the *peace of the Sabbath.* The public have the right to the benefit of the law. If actually disturbed, they can only be redressed by arresting the disturbance; compensation for it does not remove the evil. If no arrest can be made for the disturbance incident to or caused by the worldly pursuits of individuals, then it will follow that whenever it is more profitable to carry on business by paying the penalty of *four dollars* than to abstain from it, there will be found persons in the community ready, publicly and regardless of the peace of society, to engage in it. In short, *four dollars* will be a license fee for the right to carry on the most noisy employment, it may be, in the most public places on the Sabbath day, instead of a penalty, to secure its observance. If our railroad companies may run by paying the penalty, all may run, and all the

omnibuses, drays and carts in the city on the same terms. Where would be the peace and quiet of the Sabbath in such an event as this? These views do not make the law; they illustrate the reasonableness and propriety of the remedy applied.

This city has for one hundred and fifty years obeyed the law faithfully in its observance of the Sabbath day, and it is not perceptible wherein either its prosperity or character has suffered. If it is likely to do so, those most interested must apply to the law-making power of the commonwealth if they wish to exercise privileges at present withheld and prohibited. Railway corporations have accepted their charters under this law as well as other laws of the land, and should not be the first to grasp at powers not given them in the exercise of these highly profitable and beneficial franchises, bestowed on them by the liberality of the State. That the prisoner is in custody through the instigation of the passenger railway company for which he was driving, is not denied. He was their servant *pro hac vice*, and the discussion of his rights was greatly made to depend on the rights of his employers.

They were not ignorantly violating the laws in directing the running of their cars, nor is it insisted that the prisoner was, nor was it insisted that the violation was to be but a solitary trip, or a day. It was rather to be the inauguration of a new era, resting itself not so much on the laws of our own happy land, but the examples of "progress," "liberal sentiments," "modifications to suit the wants of the age," of other countries possessing neither our own morality, virtue, freedom, or independence.

These considerations were no more reasons operating on my mind in looking to conclusions, than any extreme sentiments upon the other side, which would regard all peaceful recreations on the Sabbath day as violations of God's law, and therefore necessarily of men's.

The conclusion I have come to is to refuse the discharge of this man. I no further decide upon this case than to refuse his discharge, and let the law hand him over to his proper judges at the proper time. They will decide what is best to be done when they shall have heard all the testimony in the case. They have ample

powers to hold him if he is a disturber of the peace, to give security to keep it, and to be of good behaviour, as they shall think right. I am satisfied that the conclusions I have arrived at are sustained by law, and are conducive to the peace and best interests of this community.

I have so far taken no notice of the fact that the prisoner commenced running the cars at or about one o'clock of the day, and that he was instructed to move slowly by the churches on the route. The rights of the people to the quiet of the entire day must not be made dependent upon the caution with which it is violated.

If it amounts to a disturbance, it is a breach of the peace, and if the public are entitled to an undisturbed portion of the day, they are to the whole of it. Nor was it the right of the prisoner, or his employers, to assume that the people will perform those religious exercises before one o'clock P. M., or risk disturbance.

They are neither to be constrained in the form of worship, time of worship, nor to engage in it at all, by any power, much less by conventional regulations to which they are no parties. Freedom on this point is a guarantee of the constitution.

Discharge refused and the prisoner remanded, but he may now enter into recognizance with security to appear at the next Quarter Sessions.

RECENT ENGLISH DECISIONS.

In the Court of Exchequer.

SOLOMON *vs.* THE VINTNERS' COMPANY.[1]

1. Plaintiff owned a house, adjoining it was a house of a third person, and adjoining this third person's house were two houses of defendants. The four houses for more than thirty years past were all of them out of the perpendicular, leaning to the west. Defendants contracted to have their houses (which were the most westward) pulled down, and others erected in their places. The contractor pulled them down, and by so doing the plaintiff's house fell and did damage: *Held*, that the plaintiff had not established his claim to a right of support for his house, and enjoyed as of right from the defendants through the medium of the plaintiff's house being supported by the intermediate house which leaned upon the defendants'.

[1] London "Law Times."